IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 27TH OCTOBER 2006 / 5TH KARTHIKA 1928

ST.Rev..No. 146 of 2004()

TA.79/1997 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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REVISION PETITIONER/RESPONDENT

M.MOHAMMED HAJI, CENTRAL WOOD INDUSTRIES
PALLIKKARA, KASARAGOD.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.MANOJ KUMAR.M

RESPONDENTS: APPELLANT

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 27/10/2006, ALONG WITH STRV 147 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M. JOSEPH, JJ.

S.T.REV. NO. 146 & 147 PF 2004

Dated this the 27th day of October, 2006

JUDGMENT

Ramachandran Nair,J.

These two Tax Revision Cases filed by the same assessee pertain to assessment years 1991-92 and 1993-94. We have heard counsel for the petitioner-assessee and Government Pleader. We proceed to dispose of the cases one after another.

2. S.T.Rev. No. 146 of 2004 filed by the petitioner for the year 1991-92 is against revised assessment completed under Section 19(1) of the KGST Act. After completion of original assessment, the assessing officer rechecked the accounts and found that petitioner has not accounted sale of 37 logs of jackwood. Further on detailed examination, various anomalies in the accounts were noticed because in the month of December, 1991 the assessee sold 10 logs of wood whereas for January, 1992 he sold 149 logs. However, turnover returned for January 1992 was much less than the turnover returned for

December, 1991. Obviously accounts were unacceptable and therefore the assessing officer made addition of 25% to the declared turnover and revised the assessment. Against this, the assessee filed appeal, which was allowed by the first appellate authority stating that reassessment was not justified. However, on second appeal, the Tribunal upheld the validity of assessment as well as sustained the addition saying that reassessment is permitted if there is escapement of turnover for any reason. Even though counsel for the petitioner opposed Tribunal's order, both in regard to upholding of reassessment and in regard to sustainability of addition to turnover, we are unable to accept the contentions because we find Section 19(1) is wide enough to cover escapement for any reason. The reasons stated by the Officer for reopening of assessment are perfectly valid and addition is made on rational basis. Tribunal is the final fact finding authority. We will be justified in interfering with the finding of the Tribunal only on questions of law arising out of the same. We do not find any question of law arising from the order of the Tribunal warranting our interference with the findings based on facts. Therefore we dismiss

this Tax Revision.

3. S.T. Rev. 147 of 2004 is against the order of the Tribunal sustaining addition in assessment by the assessing officer for the year 1993-94. There was inspection in the business premises of the petitioner, who is a dealer in timber. Massive stock variations noticed on inspection are stated in paragraph 4 of the Tribunal's order. Penalty was levied for evasion of tax at Rs. 36,600/- which is not seen cancelled by any higher authority in revision. Besides this, petitioner tried to explain the stock variation by stating that massive quantity of timber (200 logs) belonged to a customer who brought it for sawing. First appeal was allowed based on affidavit filed by the customer. However, on second appeal, the Tribunal found that the very same customer filed contrary affidavits in assessment proceedings and in penalty proceedings. Moreover transport bills produced in respect of the said timber was subsequent to the date of inspection, when stock variation was noticed. In the circumstances, Tribunal rightly rejected the explanation and reversed the order of the first appellate authority. So far as quantum of addition is also concerned, we are unable to

accept the argument of counsel for the petitioner because having regard to the volume of suppression noticed, addition sustained by the Tribunal is quite reasonable. We therefore decline to interfere with the order of the Tribunal. Accordingly we dismiss this Tax Revision also.

Even though both Tax Revisions are dismissed, we feel petitioner can be granted reduction in interest because during 2004 Government introduced Amnesty Scheme granting reduction of interest for payment within a reasonable time. Since Tax Revision Cases are pending for two years, we feel, petitioner can be granted waiver of 25% of the interest payable under Section 23(3) of the KGST Act provided balance arrears of tax with 75% of interest is paid within three weeks from the date of receipt of a copy of this judgment by the petitioner.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M. JOSEPH)
Judge.